

**ASSEMBLY BILL**

**No. 2417**

---

**Introduced by Assembly Member Block**

February 24, 2012

---

An act to amend Sections 44949 and 44955 of the Education Code, relating to school employees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2417, as introduced, Block. San Diego Unified School District: certificated school employees: layoff: notice.

Existing law requires specified school district officials to give a preliminary notice to the governing board and certificated employees when it is recommended that a notice be given to employees that their services are to be terminated pursuant to a reduction in the workforce for the next school year and the reasons for that reduction. Existing law requires that this preliminary notice be given by March 15. Existing law requires the final notice that an employee's services will be terminated for the next year pursuant to a reduction in the workforce to be given to the employee by May 15.

This bill would extend the deadlines for the notices described above for the 2011–12 fiscal year for the San Diego Unified School District to June 15 and August 15, respectively. The bill would also make a conforming change and technical, nonsubstantive changes.

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Diego Unified School District.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) According to the San Diego Unified School District, the  
4 May revision of the proposed budget and the annual Budget Act  
5 provide more predictive information for purposes of the district's  
6 budgetary and personnel decisions than the January budget  
7 proposed by the Governor. The San Diego Unified School District  
8 expects this to be the case again this year.

9 (b) Existing law requires school districts to issue preliminary  
10 reduction in force notices by March 15 and final reduction in force  
11 notices by May 15 of each year.

12 (c) As a result of this law and in order to guarantee that it will  
13 remain fiscally solvent, for the past five years, the San Diego  
14 Unified School District has relied on the January budget proposed  
15 by the Governor to determine the number of layoff notices that it  
16 must give to its employees. This results in hundreds of teachers  
17 receiving notices that are later rescinded when more accurate  
18 information is available in May when the proposed budget is  
19 revised and later when the annual Budget Act is enacted.

20 (d) Given the evidence that the existing statutory deadlines hurt  
21 its schools, the San Diego Unified School District and the  
22 bargaining unit of its certificated employees have determined that  
23 for the 2011–12 fiscal year it will be more productive for the  
24 schools, pupils, and teachers of the district if the deadlines for  
25 giving notice to certificated employees that the school district may  
26 terminate their services are extended by three months.

27 (e) Because of its particular circumstances, the San Diego  
28 Unified School District and the bargaining unit of its certificated  
29 employees anticipate that this act will result in fewer layoffs and  
30 greater stability for the district's pupils and schools.

31 SEC. 2. Section 44949 of the Education Code is amended to  
32 read:

33 44949. (a) (1) (A) No later than March 15 and before an  
34 employee is given notice by the governing board that his or her  
35 services will not be required for the ~~ensuing~~ next school year for

1 the reasons specified in Section 44955, the governing board and  
2 the employee shall be given written notice by the superintendent  
3 of the district or his or her designee, or in the case of a district  
4 ~~which that~~ has no superintendent by the clerk or secretary of the  
5 governing board, that it has been recommended that the notice be  
6 given to the employee, and stating the reasons ~~therefor~~ *for that*  
7 *notice.*

8 ~~Until~~

9 *(B) Notwithstanding subparagraph (A), subdivision (c), and*  
10 *any other law, for the 2011–12 fiscal year the deadline specified*  
11 *in subparagraph (A) shall be extended to June 15 for the San Diego*  
12 *Unified School District and the deadline specified in subdivision*  
13 *(c) shall be extended to August 7.*

14 (2) *Until* the employee has requested a hearing as provided in  
15 subdivision (b) or has waived his or her right to a hearing, the  
16 notice and the reasons therefor shall be confidential and shall not  
17 be divulged by any person, except as may be necessary in the  
18 performance of duties. ~~However, the~~ *The* violation of this  
19 requirement of confidentiality, in and of itself, shall not in any  
20 manner be construed as affecting the validity of any hearing  
21 conducted pursuant to this section.

22 (b) The employee may request a hearing to determine if there  
23 is cause for not reemploying him or her for the ~~ensuing~~ *next school*  
24 *year.* A request for a hearing shall be in writing and shall be  
25 delivered to the person who sent the notice pursuant to subdivision  
26 (a), on or before a date specified in that subdivision, which shall  
27 not be less than seven days after the date on which the notice is  
28 served upon the employee. If an employee fails to request a hearing  
29 on or before the date specified, his or her failure to do so shall  
30 constitute his or her waiver of his or her right to a hearing. The  
31 notice provided for in subdivision (a) shall advise the employee  
32 of the provisions of this subdivision.

33 (c) ~~In the event~~ *If* a hearing is requested by the employee, the  
34 proceeding shall be conducted and a decision made in accordance  
35 with Chapter 5 (commencing with Section 11500) of Part 1 of  
36 Division 3 of Title 2 of the Government Code, and the governing  
37 board shall have all the power granted to an agency ~~therein~~ *in that*  
38 *chapter,* except that all of the following shall apply:

39 (1) The respondent shall file his or her notice of defense, if any,  
40 within five days after service upon him or her of the accusation,

1 and he or she shall be notified of this five-day period for filing in  
2 the accusation.

3 (2) The discovery authorized by Section 11507.6 of the  
4 Government Code shall be available only if request is made  
5 therefor within 15 days after service of the accusation, and the  
6 notice required by Section 11505 of the Government Code shall  
7 so indicate.

8 (3) The hearing shall be conducted by an administrative law  
9 judge who shall prepare a proposed decision, containing findings  
10 of fact and a determination as to whether the charges sustained by  
11 the evidence are related to the welfare of the schools and the pupils  
12 ~~thereof of the schools~~. The proposed decision shall be prepared  
13 for the governing board and shall contain a determination as to the  
14 sufficiency of the cause and a recommendation as to disposition.  
15 ~~However, the~~ The governing board shall make the final  
16 determination as to the sufficiency of the cause and disposition.  
17 None of the findings, recommendations, or determinations  
18 contained in the proposed decision prepared by the administrative  
19 law judge shall be binding on the governing board. Nonsubstantive  
20 procedural errors committed by the school district or governing  
21 board of the school district shall not constitute cause for dismissing  
22 the charges unless the errors are prejudicial errors. Copies of the  
23 proposed decision shall be submitted to the governing board and  
24 to the employee on or before May 7 of the year in which the  
25 proceeding is commenced. All expenses of the hearing, including  
26 the cost of the administrative law judge, shall be paid by the  
27 governing board from the district funds.

28 The *governing* board may adopt from time to time such rules  
29 and procedures not inconsistent with provisions of this section as  
30 may be necessary to effectuate this section.

31 (d) Any notice or request shall be deemed sufficient when it is  
32 delivered in person to the employee to whom it is directed, or when  
33 it is deposited in the United States registered mail, postage prepaid  
34 and addressed to the last known address of the employee.

35 (e) If after request for hearing pursuant to subdivision (b) any  
36 continuance is granted pursuant to Section 11524 of the  
37 Government Code, the dates prescribed in subdivision (c) which  
38 occur on or after the date of granting the continuance and the date  
39 prescribed in subdivision (c) of Section 44955 which occurs after

1 the date of granting the continuance shall be extended for a period  
2 of time equal to the continuance.

3 SEC. 3. Section 44955 of the Education Code is amended to  
4 read:

5 44955. (a) ~~No~~A permanent employee shall *not* be deprived  
6 of his or her position for causes other than those specified in  
7 Sections 44907 and 44923, and Sections 44932 to 44947, inclusive,  
8 and a probationary employee shall not be deprived of his or her  
9 position for cause other than as specified in Sections 44948 to  
10 44949, inclusive.

11 (b) ~~Whenever~~~~(1) If~~ in any school year the average daily  
12 attendance in all of the schools of a district for the first six months  
13 in which school is in session shall have declined below the  
14 corresponding period of either of the previous two school years,  
15 ~~whenever if~~ the governing board determines that attendance in a  
16 district will decline in the ~~following~~ *next school* year as a result  
17 of the termination of an interdistrict tuition agreement as defined  
18 in Section 46304, ~~whenever if~~ a particular kind of service is to be  
19 reduced or discontinued not later than the beginning of the  
20 ~~following~~ *next* school year, or ~~whenever if~~ the amendment of state  
21 law requires the modification of curriculum, and ~~when if~~ in the  
22 opinion of the governing board of the district it shall have become  
23 necessary by reason of any of these conditions to decrease the  
24 number of permanent employees in the district, the governing  
25 board may terminate the services of not more than a corresponding  
26 percentage of the certificated employees of the district, permanent  
27 as well as probationary, at the close of the school year. Except as  
28 otherwise provided by ~~statute law~~, the services of ~~no~~ a permanent  
29 employee ~~may shall not~~ be terminated under the provisions of this  
30 section while any probationary employee, or any other employee  
31 with less seniority, is retained to render a service ~~which said that~~  
32 *the* permanent employee is certificated and competent to render.

33 ~~In~~

34 (2) *In* computing a decline in average daily attendance for  
35 purposes of this section for a newly formed or reorganized school  
36 district, each school of the district shall be deemed to have been  
37 a school of the newly formed or reorganized district for both of  
38 the two previous school years.

39 ~~As~~

(3) As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the ~~students thereof~~ *pupils of the district*. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days ~~prior to~~ *before* the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) (1) (A) Notice of ~~such~~ termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of ~~such~~ *these* employees shall be terminated in the inverse of the order in which they were employed, as determined by the *governing* board in accordance with the provisions of Sections 44844 and 44845. ~~In the event that~~ *If* a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ~~ensuing~~ *next* school year.

~~The~~  
(B) *Notwithstanding subparagraph (A) and any other law, for the 2011–12 fiscal year, the San Diego Unified School District shall give the notice of termination of services before August 15.*

(2) *The* governing board shall make assignments and reassignments in ~~such~~ a manner that employees shall be retained to render any service ~~which~~ *that* their seniority and qualifications entitle them to render. ~~However, prior to~~ *Before* assigning or reassigning any certificated employee to teach a subject ~~which~~ *that* he or she has not previously taught, and for which he or she does not have a teaching credential or ~~which~~ *that* is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

1 (d) Notwithstanding subdivision (b), a school district may  
2 deviate from terminating a certificated employee in order of  
3 seniority for either of the following reasons:

4 (1) The district demonstrates a specific need for personnel to  
5 teach a specific course or course of study, or to provide services  
6 authorized by a services credential with a specialization in either  
7 pupil personnel services or health for a school nurse, and that the  
8 certificated employee has special training and experience necessary  
9 to teach that course or course of study or to provide those services,  
10 which others with more seniority do not possess.

11 (2) For purposes of maintaining or achieving compliance with  
12 constitutional requirements related to equal protection of the laws.

13 SEC. 4. The Legislature finds and declares that a special law  
14 is necessary and that a general law cannot be made applicable  
15 within the meaning of Section 16 of Article IV of the California  
16 Constitution because of the unique situation of the San Diego  
17 Unified School District, as described in Section 1 of this act.

18 SEC. 5. This act is an urgency statute necessary for the  
19 immediate preservation of the public peace, health, or safety within  
20 the meaning of Article IV of the Constitution and shall go into  
21 immediate effect. The facts constituting the necessity are:

22 In order to allow the San Diego Unified School District to make  
23 more informed budgetary and personnel decisions by extending  
24 for the 2011–12 fiscal year the deadlines for the notice given by  
25 the San Diego Unified School District to its certificated employees  
26 in anticipation of the termination of employee services, it is  
27 necessary that this act take effect immediately.